COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 303 of 2004

United India Insurance Company Ltd.
Dehradun. … **Appellant.**

Versus

Smt. Soniya Sethi and others. … **Respondents.**

Mr. D.S.Patni, learned counsel for the appellant.
Mr. V.P.Kohli, Advocate, learned counsel for respondents no. 1 and 2.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Heard. Admit.

This appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 18-5-2004, passed in M.A.C.T. No. 94 of 2003, Smt. Soniya Sethi and others Vs. Sri Jagmohan and others, by the Motor Accident Claims Tribunal/Additional District Judge IV F.T.C. Dehradun, ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 7,30,955/- along with interest @ 9% per annum in favour of the claimants as against the Opposite Party No.3-appellant.

The Insurance Company has challenged the impugned award on the ground that it has raised objection under Section 170 of the Act before the learned Tribunal, but the Tribunal concerned did not frame an issue as to whether the owner of the vehicle was in collusion with the claimants or not and the compensation has been awarded on the basis of the admission of the owner.

Learned counsel for the respondent nos. 1 and 2, Sri V.K.Kohli invited our attention to the objection/application made under Section 170 of the Act by the appellant in which a prayer has been made by the Insurance Company reserves its right to defend the case on all the defences available under the provisions of Section 170 of the Act, It is undisputed that permission under Section 170(b) of the Act was not granted to the appellant by the Tribunal.

Now, coming to the objection of the appellant, we find that the appellant has raised objection, therefore, what were the defences in the written statement has to be examined in the light of the objection under Section 170 of the Act moved by the appellant. In para 24 of the objection/written statement, filed by the Insurance Company, it has been stated that the claimants and the owner of the vehicle involved in the accident are in collusion. Along with other grounds, the Insurance Company has raised a plea on the quantum of compensation that the claimants are not liable to compensation as claimed by them.

Before the learned Tribunal, no evidence has been led by the Insurance Company against the evidence of the claimant-respondents relating to the income of the deceased, on the basis of which the compensation has been determined. The Tribunal has framed an Issue as to what compensation is payable to the claimant-respondents and while considering this Issue, the learned Tribunal has taken the aid of the provisions of Section 163-A of the Act. The learned Tribunal has determined the income of the deceased on the basis of the evidence led by the claimant-respondents. The deceased was a practicing advocate and his age was 35 years. On the basis of the evidence on record, the Tribunal determined the income of the deceased only Rs. 4200/- per month and after deducting 1/3rd from it, the dependency has been determined to be

Rs. 2800/- per month. On this basis, the learned Tribunal has applied the multiplier of 17 for determination of the compensation and has awarded amount of Rs. 7,30,955/- along with 9% interest.

We have perused the impugned judgment and award passed by the M.A.C.T. concerned. Having gone through the entire material before us, we find that the learned Tribunal, while calculating the amount of compensation and arriving at the conclusion, has considered all the evidence on record, therefore, in view of the law laid down by the Apex Court in the case of ***"National Insurance Co. Ltd. Chandigarh V. Nicolletta Rohtagi & Ors. (2002 (7) S.C.C. 456)***, it was not open to the insurer to challenge the quantum of compensation and, therefore, the findings of the learned Tribunal do not require any interference on this score by this Court.

From the perusal of the impugned, it is evidently clear that the compensation awarded is not affected by collusion, if any, between the claimants and the owner of the vehicle. The claim petition of the claimants was under Section 166 of the Act and the learned Tribunal has given reasons in coming to just amount of compensation. We have examined the controversy raised before us from all aspects of the case and we find that the conclusions arrived at by the learned Tribunal are not influenced by collusion between the claimants and the owner of the vehicle. It is admitted that no permission was granted under Section 170(b) of the Act to the appellant. Even if no specific issue was framed by the learned Tribunal relating to collusion, the learned counsel for the appellant-Insurance Company could not point out us to how the impugned judgment and award is influenced by so-called collusion, therefore, in our opinion, it is not a case fit for remand to the M.A.C.T. concerned to frame an Issue and decide the case afresh, which will linger-on the proceeding causing delay in payment of compensation. Delay in payment of compensation will lead to

starvation to the dependents of the deceased, as the claimant-respondents are widow, one year infant son and widow mother. The deceased Advocate was the sole earning member in the family of dependents-claimants.

Therefore, the appeal is devoid of merit and is liable to be dismissed.

Accordingly, the appeal is dismissed. The judgment and award under appeal is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Claims Tribunal concerned.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP